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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1177th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 3 p.m.

Chairman: Mr. Banton

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft conclusions of the Committee concerning the tenth to thirteenth periodic reports of Brazil (continued) (CERD/C/49/Misc.9, document distributed in the meeting in French only)

1. The CHAIRMAN reminded members that the Committee had, at its 1176th meeting, already adopted the first 11 paragraphs of the draft conclusions prepared by Mr. de Gouttes, the Rapporteur for Brazil. He invited members to continue consideration of the draft conclusions.

Paragraph 12

2. After an exchange of views in which Mr. de GOUTTES (Rapporteur for Brazil), Mr. DIACONU, the CHAIRMAN, speaking in his personal capacity, and Mrs. SADIER (Secretariat) took part, it was decided to replace the term "autochtones" by "indigènes" in paragraphs 9, 10, 11, 15, 18, 20 and 21 of the French version of the draft conclusions to reflect more closely the terminology used in Brazil.

3. After a further exchange of views in which Mr. de GOUTTES (Rapporteur for Brazil) and Mr. DIACONU took part, the following wording was adopted for paragraph 12: "Special concern is expressed about the fate of the most vulnerable populations, especially the indigenous, black and mestizo populations."

Paragraph 14

4. After an exchange of views in which Mr. de GOUTTES (Rapporteur for Brazil), Mr. WOLFRUM and MR. DIACONU took part, the following wording was adopted for paragraph 14: "The fact that an illiterate citizen belonging to the indigenous, black or mestizo populations or to other vulnerable groups cannot be elected in political elections is contrary to article 5 (c) of the Convention."

Paragraph 17

5. Replying to a question by Mr. Wolfrum, Mr. de GOUTTES (Rapporteur for Brazil) said that, in its periodic report, Brazil did in fact refer to ongoing programmes.

Paragraph 18

6. Mr. VALENCIA RODRIGUEZ suggested that the wording might be amended by deleting the words "in integrating" from the first sentence.

7. Mr. de GOUTTES (Rapporteur for Brazil) proposed reverting to the earlier wording by replacing "difficulties" by "social difficulties encountered by the black, indigenous and mestizo populations", and leaving the rest of the paragraph unchanged.

Paragraph 20

8. Mr. de GOUTTES (Rapporteur for Brazil) said that the words underlined and in square brackets reflected a reservation by Mr. Diaconu.

9. Mr. DIACONU, supported by Mr. RECHETOV, proposed that, to take account of the scope of the Convention, the words "peasants ... magistrates" after the word "people" should be deleted and replaced by "as well as other ethnic groups".

10. Mr. WOLFRUM said that, while associating himself with the view expressed by Mr. Diaconu, he would prefer the wording "as well as other underprivileged groups".

11. Mr. YUTZIS proposed that "show" in the second line should be replaced by "put into practice". While he shared the view expressed by Mr. Diaconu, he would prefer the wording "as well as other vulnerable groups".

12. Mr. AHMADU said that, in the case of a country such as Brazil, mention should be made of blacks, as well as of indigenous peoples.

13. Mr. de GOUTTES (Rapporteur for Brazil) read out the first sentence of paragraph 20 with the amendments proposed by previous speakers, as follows: "The Committee recommends that the Government of Brazil should more vigorously put into practice its determination to defend the fundamental rights of indigenous people, blacks and other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death." The rest of the paragraph would remain unchanged.

Paragraph 21

14. Mr. DIACONU proposed that, in the second sentence, the words "for this purpose" should be inserted before "where land disputes" and "peasants" should be deleted as they represented an economic rather than an ethnic group.

Paragraph 22

15. Mr. GARVALOV asked whether all States parties with significant indigenous populations had been similarly encouraged to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

16. Mr. RECHETOV, supported by Mr. SHERIFIS, said that a similar recommendation should be included in the Committee's conclusions concerning all countries with indigenous or tribal peoples.

17. Mr. van BOVEN said that the question of ratifying ILO Convention No. 169 should be dealt with on a case by case basis, as there were countries, including his own, which did not have indigenous populations but had nevertheless ratified the Convention because of its implications for their relations with countries in which there were indigenous populations.

18. Mr. GARVALOV, referring to paragraph 2 of the conclusions, recalled that during the Committee's discussions on Brazil, a number of members had drawn attention to the very frank nature of the report and the courage shown by the State party in admitting mistakes before the Committee. He would have expected the conclusions to accord greater recognition to that frankness and courage.

19. Mr. de GOUTTES (Rapporteur for Brazil), associating himself with the view expressed by Mr. Garvalov, proposed that the beginning of paragraph 2 should be amended by ending the first sentence at the word "break" and wording the second sentence as follows: "It expresses its satisfaction to the State party for the frankness of its report and of the explanations given by its delegation." The rest of the paragraph would remain unchanged.

20. The Committee's draft conclusions concerning the tenth to thirteenth periodic reports of Brazil, as a whole, were adopted, as orally amended.

Draft conclusions of the Committee concerning the tenth to fourteeth periodic reports of India (CERD/C/49/Misc.6, document distributed in the meeting in English only)

21. Mr. RECHETOV (Rapporteur for India) said that the document before the Committee (CERD/C/49/Misc.6) was based on a document prepared by the secretariat into which he had incorporated comments and proposals made by many members of the Committee. Some, which he considered not to represent the general view of the Committee, may have been omitted.

22. The CHAIRMAN invited members to consider the draft conclusions concerning India.

Paragraph 2

23. Mr. DIACONU proposed ending the third sentence with the words "the Convention in practice".

24. He also noted that the tenor of the sentence thus abbreviated, namely that the report did not provide concrete information on the implementation of the Convention in practice, indicated sufficiently clearly that the obligation under article 9 had not been complied with, so that there was no need to dwell further on the State party's compliance with its obligations under article 9 in the introduction to the conclusions.

25. Mr. RECHETOV (Rapporteur for India) associated himself with the view expressed by Mr. Diaconu.

Paragraphs 3 and 4

26. Mr. WOLFRUM said that these two paragraphs belonged in section D "Principal subjects of concern", rather than in section A "Introduction".

27. The CHAIRMAN said that the Committee would consider the paragraphs when it took up section D of the conclusions.

Paragraph 6

28. Mr. GARVALOV said that, in the light of the Committee's mandate, the reference to the extreme poverty of the population had no place in the draft report. The provisions of the Convention applied only to situations where there was discrimination against certain ethnic groups.

29. Mr. WOLFRUM noted that paragraph 6 appeared in the section of the draft report entitled "Factors and difficulties impeding the implementation of the Convention". Poverty was referred to simply as one of those factors.

30. Mr. RECHETOV (Rapporteur for India) proposed that the problem might be overcome by referring to the extreme poverty of certain population groups.

31. Mr. SHAHI said that the Committee should be careful to choose more objective wordings. By mentioning only the climate of violence and terrorism, it was siding with India and disregarding the fact that thousands of persons had been killed or had disappeared in Kashmir. He proposed that, in the interest of fairness, the words "and repression" should be inserted between "terrorism" and "in certain parts of the country" and that the last part of the sentence should be replaced by "are not conducive to the full implementation of the Convention in all the areas administered by the State party". The text as it stood suggested that the Committee regarded Kashmir as part of India.

32. Mr. CHIGOVERA said that, while he quite understood Mr. Shahi's concerns, it was not for the Committee to define the frontiers of States parties. Questions of self-determination did not fall within its purview.

33. Mr. DIACONU said that he fully shared Mr. Chigovera's position. Moreover, paragraph 6 dealt with factors impeding the implementation of the Convention and not with violations of it, which were taken up in another section of the draft report. Although repression could constitute a violation of the Convention, it was not a factor impeding its implementation.

34. The CHAIRMAN suggested that, as a compromise, the words "in the State party" could be deleted, so that the paragraph would end with the word "Convention".

35. Mr. WOLFRUM said that he could accept that proposal, although it dealt with only part of the problem. He understood why Mr. Shahi wished to insert the words "and repression" after the word "terrorism", the idea being that India might react to violence with repression. As a compromise, the words "and repression" could be inserted as proposed by Mr. Shahi and the paragraph could end as suggested by the Chairman.

36. Mr. SHAHI supported Mr. Wolfrum's proposal.

37. Mr. RECHETOV (Rapporteur for India) said that it was the State party which implemented the Convention. Failing to mention the fact would not resolve the problem. Moreover, the question would come up again in the following paragraphs.

38. Mr. DIACONU proposed that the words "by the State party" should be used.

39. Mr. SHAHI said that the problem remained. The Committee, which had been very strict during consideration of the reports concerning China and the Russian Federation, was unfortunately not showing the same concern for even-handedness in the case of India. As it stood, paragraph 6 suggested that the Committee regarded any action in Kashmir as terrorism. If the Committee wished to adopt the draft report rapidly, without its members having an opportunity to express their thoughts, it could simply take a vote.

40. Mr. GARVALOV said that he agreed with Mr. Shahi that members of the Committee should have an opportunity to consider the document in detail.

41. Mr. van BOVEN said that he could not subscribe to amendments which cast doubt on the sovereignty of a State party. However, he fully agreed with Mr. Shahi there were deficiencies in the wording of the draft report.

42. Mr. LECHUGA said that one solution might be to refer only to the climate of violence in some parts of the country, without mentioning terrorism.

43. After an exchange of views in which Mr. YUTZIS, Mr. AHMADU and Mr. SHERIFIS took part, the CHAIRMAN said that, if he heard no objection, he would take it that members of the Committee wished the second sentence of paragraph 6 of the draft report to read as follows: "It is also noted that the extreme poverty of certain groups of the population, the system of castes and the climate of violence in certain parts of the country are among the factors that impede the full implementation of the Convention by the State party."

44. It was so decided.

Paragraph 8

45. Mr. YUTZIS said that, as it stood, paragraph 8 finished on a negative note, whereas the section in which it appeared concerned positive aspects. The matter could be dealt with by simply placing the second part of the paragraph, beginning "although it is regretted" at the beginning of the paragraph.

46. Mr. WOLFRUM said that he had the same concern as Mr. Yutzis, but wished to propose a different solution. The paragraph consisted of three parts. The first, from "The demographic data" to "are welcomed" and the last, from "and the data" to the end of the paragraph, should remain where they were. The second part, from "although it is regretted" to "in proportion to their size", however, should be inserted in the section of the report entitled "Principal subjects of concern".

Paragraph 9

47. Mr. WOLFRUM proposed that the sentence beginning "It is regretted" should be moved to paragraph 13, as had been done in other instances.

Paragraph 10

48. The CHAIRMAN said that, in the last sentence, the reference should be to article 2.1 of the Convention.

Paragraph 11

49. Mr. YUTZIS noted that, as in the two preceding paragraphs, this paragraph contained a sentence beginning "Regrets that". He proposed that it should be inserted in the section entitled "Principal subjects of concern".

50. Mr. SHAHI said that the paragraph referred only to the northeastern part of the country, and that Jammu and Kashmir should also have been mentioned. Moreover, the words "considered to be characterized by civil disturbances by the central authorities" should be deleted, as it expressed the position of the Indian Government.

51. Mr. CHIGOVERA said that, if the intention was to cast doubt on India's sovereignty, he would find it very difficult to accept Mr. Shahi's proposal.

52. Mr. DIACONU said that, by adding the reference to Jammu and Kashmir, the Committee would be acting as if the Terrorist and Disruptive Activities (Prevention) Act had been abrogated in that province also, which was not at all the case.

53. Mr. SHAHI was insistent that reference should be made to the abrogation of the Terrorist and Disruptive Activities (Prevention) Act, which was also applied in Jammu and Kashmir. The Indian authorities had in fact themselves recognized that the implementation of the Act had given rise to abuses in various States.

54. Following an exchange of views in which Mr. GARVALOV, Mr. CHIGOVERA, Mr. DIACONU, Mr. RECHETOV (Rapporteur for India), Mr. SHERIFIS and Mr. WOLFRUM took part, and in the light of the proposals made, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the following text for paragraph 11: "The abrogation of the Terrorist and Disruptive Activities (Prevention) Act, which applied to parts of the northeastern part of the country and to Jammu and Kashmir, is welcomed. In those parts, the right to personal security of some members of ethnic and religious minorities was often reported to be violated by security forces. The Committee regrets that a Criminal Law Amendment Bill containing many provisions of TADA has been proposed". The reference to the National Security Act and, in Jammu and Kashmir, the Public Safety Act remaining in force would be moved to paragraph 19.

55. It was so decided.

56. The CHAIRMAN invited the Committee to consider paragraphs 3 and 4 of the draft, which would be inserted in section D, before the current paragraph 13.

Paragraph 3

57. Mr. WOLFRUM said that the beginning of the paragraph should be amended to read: "... of the report and reiterated in the oral presentation, ...". The words "wishes to state that" would be replaced by "states that" and in the second sentence, the word "Believes" would be replaced by "Affirms". The following sentence would also be added: "The Committee has emphasized its grave concern that during the discussion of the report there was no inclination on the side of the State party to reconsider its position."

58. Mr. de GOUTTES said that paragraph 3 could be inserted before paragraph 13, provided that the following sentence was added to paragraph 2 of the introduction: "It also regrets that the report and the delegation continue to assert that the situation of scheduled castes and tribes does not fall within the scope of the Convention."

59. Mr. FERRERO COSTA supported the amendment proposed by Mr. de Gouttes, which would enable the report to reflect an essential aspect of the debate.

60. Mr. van BOVEN said that he also supported the amendment proposed by Mr. de Gouttes, which should, however, read "... the report and the delegation assert that the situation ...". He had already had occasion to point out that the position of the Indian authorities on the question seemed regressive.

61. Mr. GARVALOV said that reference should be made in the paragraph not only to the population of Jammu and Kashmir, but also to members of other ethnic groups. Only one reference was made to the untouchables, for example, in the text under consideration, in paragraph 18.

62. The CHAIRMAN said that the text had been prepared bearing in mind the fact that objections could be raised on the grounds that the conflict in Jammu and Kashmir was of a political and religious nature and therefore did not fall within the scope of the Convention.

63. Following a discussion in which Mr. AHMADU, Mr. SHAHI, Mr. DIACONU, Mr. van BOVEN, Mr. de GOUTTES, Mr. YUTZIS, Mr. RECHETOV and Mr. GARVALOV took part, as to whether the Committee - being fully informed of the situation - should refer to reports and state that they were reliable, the CHAIRMAN suggested that the Committee should express its grave concern about the fact that the Kashmiris and other ethnic groups were, because of their ethnic origin, often treated in a manner contrary to the provisions of the Convention. He also suggested that the paragraph should be placed in the beginning of section D, before the current paragraph 13 of the conclusions.

64. It was so decided.

Paragraph 13

65. Mr. SHAHI said that the paragraph should include a sentence stating that the Committee deplored the fact that the Human Rights Commission had been unable to consider cases of human rights violations which had occurred more than a year before the complaint was filed.

66. Mr. YUTZIS said that the word "may" was too weak, since the restriction of the powers of the Human Rights Commission actually did contribute to the impunity of the armed forces, and the force of that observation should not be reduced.

67. The CHAIRMAN supported deleting the word "may".

68. It was so decided.

Paragraph 14

69. Mr. WOLFRUM proposed adding to the paragraph a sentence stating that, as a result, it was impossible to determine whether the two commissions mentioned had a positive effect on the enjoyment of human rights and fundamental freedoms by members of the scheduled castes and tribes or minorities.

70. Mr. GARVALOV said that the two sentences could be combined.

71. Mr. AHMADU said that the paragraph should state that there was an absence of information, rather than just a lack of information.

Paragraph 16

72. Mr. FERRERO COSTA said that, as it stood, the paragraph seemed somewhat contradictory in that it began by expressing satisfaction and finished with regrets. Would it not be better to highlight the regrets?

73. The CHAIRMAN suggested recasting the sentence to state clearly that the Committee regretted the lack of concrete information on the legal provisions prohibiting racist organizations and on the application of those provisions in practice, including eventual court decisions.

74. Mr. SHAHI requested that a sentence should be added to the effect that the lack of information was particularly serious in view of the reports of widespread violence against certain minorities, violence which was actively encouraged by certain extremist organizations which had not been declared illegal.

75. Mr. GARVALOV said that the Committee's satisfaction that article 4 of the Convention was starting to be implemented should be expressed in a separate paragraph in part C of the conclusions.

76. The CHAIRMAN noted that the proposal seemed to meet with the approval of members and assured the Committee that it would be reflected in the final version of the conclusions.

Paragraph 17

77. Mr. FERRERO COSTA said that there was some inconsistency between paragraphs 17 and 24. If the Committee did not have information enabling it to evaluate the implementation of article 5 of the Convention, how could it recommend that the State party should continue its efforts in that direction?

78. Mr. SHAHI recalled that the representative of India had stated that the reason why the question of economic, social and cultural rights was not dealt with in specific texts was that it did not fall within the scope of the Directive Principles of State Policy concerning those rights. Moreover, it should not be concluded that the lack of information on the enjoyment of economic, social and cultural rights made it difficult to evaluate the implementation of the other provisions of article 5 of the Convention.

79. Mr. DIACONU said that, in fact, it was not information on the implementation of the Convention that was lacking, but simply information which would shed light on the implementation of the Directive Principles of State Policy. Civil and political rights were dealt with in paragraph 19 of the conclusions. He suggested that the Committee should point out that the lack of information made its task more difficult, rather than difficult in th absolute.

80. In the light of observations and proposals made by Mr. van BOVEN, Mr. CHIGOVERA and Mr. YUTZIS, the CHAIRMAN proposed that the Committee shoul state in paragraph 17 that the lack of information on the texts of the Directive Principles of State Policy of the Constitution relating to the promotion of social, economic and cultural rights and on the measures to put them into effect, made any evaluation of the implementation of article 5 of the Convention more difficult.

81. It was so decided.

Paragraph 18

82. The CHAIRMAN, recapitulating observations made by Mr. CHIGOVERA, Mr. YUTZIS and Mr. WOLFRUM, suggested that the reference to the Civil Rights Act (1985) and the word "alleging" in the seventh line of the English text, which weakened the Committee's statement, should be deleted from the final version of paragraph 18. However, the paragraph should state that the practices described in the last sentence constituted a violation of article 5 (f) of the Convention.

83. It was so decided.

Paragraph 19

84. Mr. WOLFRUM said that he was bothered by a certain ambiguity in the wording of the paragraph which could be taken as suggesting that efforts to establish equality in the exercise of political rights had inevitably led to violence.

85. Mr. RECHETOV (Rapporteur for India) disputed the validity of that interpretation as the paragraph was intended merely to draw attention to a situation in which conflicts between groups occurred under the pretext of equal rights. He agreed, however, that the wording of the paragraph could b improved.

86. Mr. AHMADU said that the Committee should express its concern more clearly and refer to the whole of article 5 of the Convention.

87. Mr. DIACONU said that only article 5 (c) concerned political rights, which were precisely the subject of the paragraph in question. In his view, the fact that there had been a problem meant that there had been discrimination, a practice which should be condemned in itself, over and above any adverse consequences. The Committee should therefore express its concern about such discrimination.

88. Mr. SHAHI said that article 5 (c) dealt in particular with the right to participate in elections. However, the whole problem in Kashmir was that elections there were fraudulent. Two months earlier, for example, the population had voted at gunpoint. As it stood, the paragraph was too vague. The Committee should state that the denial of the right to the equal exercise of the political rights embodied in article 5 of the Convention had in the past led to renewed outbreaks of violence, particularly in Jammu and Kashmir.

89. Mr. van BOVEN said that, since the situation had not changed, no reference should be made to the past.

90. The CHAIRMAN took note of Mr. van Boven's observation and observed that the Committee was agreed on the first sentence of paragraph 19. Consideration of the draft conclusions would resume at the following meeting with a discussion of aspects of paragraph 11 and other particulars which might be added to it.

The meeting rose at 6 p.m.